

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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|----------------------------------|---|----------------------|
| IN RE: |) | CASE NO. 03-82229-JB |
| |) | |
| CAROLYN DENISE UPSHUR, |) | |
| |) | |
| Debtor. |) | |
| _____ |) | CHAPTER 7 |
| |) | |
| TAMARA OGIER, as Trustee for the |) | |
| Estate of Carolyn Denise Upshur, |) | |
| |) | |
| Movant, |) | |
| |) | |
| v. |) | |
| |) | |
| CAROLYN DENISE UPSHUR, |) | |
| |) | |
| Respondent. |) | |

ORDER

This reopened Chapter 7 case came before the Court for a hearing on March 22, 2006 on two motions filed by the Chapter 7 Trustee: (1) a motion to determine that the debtor, Carolyn Denise Upshur, has no allowed exemption in the Trustee's recovery from claims asserted in the action styled *Weekes, Harris, and Ogier, as Trustee for the Estate of Upshur v. Trauner, Cohen & Thomas, LLP and National Asset Recovery, Inc.*, Case No. 1:04-cv-0686-cc, pending in the United States District Court for the Northern District of Georgia (the "District Court Litigation") and (2) a motion to approve a compromise of the Trustee's claims in the District Court Litigation for \$7,500.00. Present at the hearing were Tamara Ogier, the Chapter 7 Trustee; Susan Brown, the Trustee's special counsel; the debtor; Lorna Sills Katica, counsel for Ms. Upshur; and Louis R. Cohan, counsel for Defendants, Trauner, Cohen & Thomas, LLP

("TCT") and National Asset Recovery, Inc. ("NAR") in the District Court Litigation. The debtor opposed both of the Trustee's motions. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A),(B) and (O).

After considering the pleadings filed, the evidence presented, including the testimony of the debtor and Susan Brown, and the arguments of counsel, the Court stated its findings of fact and conclusions of law in open court on the record on March 22, 2006, pursuant to Fed. R. Civ. P. 52 made applicable by Fed. R. Bankr. P. 7052, and Fed. R. Bankr. P. 9014. With respect to the Trustee's motion to disallow the debtor's amended exemption claim, the Court concluded after a detailed examination of the evidence that the debtor's failure to disclose her employment claims against TCT and NAR in either the Schedules, Statement of Financial Affairs or at the meeting of creditors amounted to an intentional concealment of a claim that requires the Court to disallow the debtor's amended claim for an exemption. This conclusion was supported by the debtor's testimony which evidenced that at approximately the same time as the debtor filed her bankruptcy case on November 13, 2003, she was considering and discussing an action against TCT and NAR, but failed to advise the Chapter 7 Trustee of this contingent claim or disclose the claim in her Schedules. Prior to the continued § 341 Creditors' Meeting, held on January 14, 2004, the debtor had filed on November 24, 2003, a request for notice of the right to sue with the Equal Employment Opportunity Commission ("EEOC"), and on December 11, 2003 the EEOC issued the debtor a notice of her right to sue.

With respect to the Trustee's motion to approve the compromise and settlement of the Trustee's claims against TCT and NAR in the District Court Litigation, the Court concluded that

the Trustee had met the standard for approval of a settlement as set forth in *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks, II, Ltd.)*, 898 F.2d 1544 (11th Cir. 1990). The Trustee persuaded the Court that the probability of recovering an amount substantially in excess of the proposed settlement was not high. The Trustee demonstrated that the expense, inconvenience, and delay of litigation would be substantial, and this weighed heavily in favor of the Trustee's compromise and settlement. The Trustee also advised the Court that, in her opinion, there was some possibility that she would have difficulty collecting a final judgment in her favor. The Court concluded that the settlement and compromise for \$7,500.00 which the Trustee negotiated with TCT and NAR should be approved, as the Trustee represented that this settlement would provide some distribution to creditors and some payment of administrative expenses. Given all the facts and circumstances, the Court concluded that this settlement did not fall below the lowest point of reasonableness. *Anaconda-Ericsson, Inc. Hessen (In re Teltronics Servs., Inc.)*, 762 F.2d 185, 189 (2nd Cir. 1985)(only a settlement which “falls below the lowest point of reasonableness” will not withstand review) (citations omitted).

Debtor's counsel objected to the compromise and settlement, but she did not support the objection with any damages calculations or clear legal analysis of the monetary claims. She argued, both in her brief and at the hearing, that the Trustee's claims were worth \$250,000.00, but did not provide the Court with a coherent, meaningful explanation as to how this number was calculated. Based on the record presented, it would be an abuse of discretion to disapprove the Trustee's proposed settlement and to require the Trustee to litigate the District Court action and then delay and possibly forfeit any distribution in this bankruptcy case.

At the conclusion of the evidence, argument and oral ruling on March 22, 2006, counsel for the debtor, Ms. Katica, requested permission to introduce depositions, exhibits and pleadings from the District Court Litigation. The Court reconvened on March 24, 2006, to permit Ms. Katica to specify what portions of which depositions and which exhibits she argued had relevance to the motions before the Bankruptcy Court. Ms. Katica and Ms. Ogier were both present in Court on March 24, 2006. The Court admitted and reviewed identified portions of the depositions and certain exhibits. After carefully reviewing the additional evidence, the Court does not find any basis to alter its oral ruling of March 22, 2006. Pursuant to those findings of fact and conclusions of law stated on the record on March 22, 2006, the Trustee's motion to disallow the debtor's exemption is granted and the Trustee's motion to approve the compromise and settlement of the Trustee's claims in the District Court for monetary relief is granted.

IT IS SO ORDERED, this ____ day of March, 2006.

JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING:

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